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IN THE COURT OF APPEALS OF INDIANA

STANLEY RODGERS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0606-CR-347
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Evan Goodman, Judge
Cause No. 49F15-0508-FD-130816

March 29, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Stanley Rodgers[1] appeals his convictions for theft as a class D felony[2] and possession of paraphernalia as a class A misdemeanor.[3] Rodgers raises two issues, which we revise and restate as:

I. Whether the investigative stop of Rodgers violated Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868 (1968); and

II. Whether the evidence is sufficient to sustain Rodgers's convictions.

We affirm.

The relevant facts follow. Around two a.m. on August 1, 2005, Angela Davis, who lived on Somerset Street in Indianapolis, was awakened by her little sister. Davis looked out the window and saw a man in the car of her neighbor, Terry Cassity, rummaging through the contents of the vehicle. Davis yelled at the man, asked him if there was anything she could do to help him, and asked him why he was in her neighbor's car. The man looked at Davis, exited the vehicle, and was carrying a "soft lunch box." Transcript at 16. The man walked over to and entered a truck that belonged to Davis's father. The man left the second vehicle and turned down Walnut Street.

Davis called the police, and Indianapolis Police Officer Jeffrey Luster arrived on the scene and spoke with Davis. Davis described the man as "a white male wearing blue

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[1] We note that the notice of appeal and charging information spells the appellant's last name as "ROGERS," Appellant's Appendix at 17-18; however the appellant spelled his last name as "R-O-D-G-E-R-S" for the trial court. Transcript at 79.

[2] Ind. Code § 35-43-4-2 (2004).

[3] Ind. Code § 35-48-4-8.3 (2004).

jeans, blue or green tee shirt" and brown "kind of straggly hair." Id. at 32. Officer Luster put the description out on the police radio. Officers Ristedt and Roy Street observed a man, later identified as Rodgers, matching the description on the first street east of Somerset and approximately two blocks south. Officer Luster drove Davis to the man's location, and Davis identified Rodgers as the man who was rummaging through the vehicles.

Officer Luster arrested Rodgers. Rodgers had "a green, Thermos lunch bag, which was soft in nature," "a couple of screwdrivers," "a black CD visor holder with some CDs in it," "a keychain that had Northwest High School on it," and a brown umbrella. Id. at 37. Officer Luster woke up Cassity and asked her to look around her vehicle for anything missing. Cassity discovered that the rear view mirror in her vehicle was "busted off" the windshield. Id. at 25. Cassity also identified the umbrella recovered from Rodgers as belonging to her. Officer Luster searched Rodgers and discovered a small silver pipe, which had residue of cocaine inside, in the back of Rodgers's pant pocket. Id. at 38.

The State charged Rodgers with theft as a class D felony and possession of paraphernalia as a class A misdemeanor. During Officer Luster's testimony, Rodgers moved to "exclude the arrest . . . based on the fact that we're not sure Deputy Ristedt followed procedure properly in order to apprehend Mr. Rodgers." Id. at 34. Rodgers's attorney also stated:

> [T]he point is that this Officer just testified that he believes the description to the best of his knowledge was a white male wearing blue jeans and a blue or green shirt, could not remember any height, could not remember any weight. It doesn't give the law enforcement officers free leave to stop anyone in the neighborhood wearing that description. They had something more specific, more particularized that called for in TERRY vs. OHIO where it says particularized, if you know which direction he had fled in, if he was running, we don't have that officer here today to make that connection, Judge.

Id. at 35-36. The trial court overruled the objection. After the bench trial, the trial court found Rodgers guilty as charged. The trial court sentenced Rodgers to three years in the Indiana Department of Correction for the class D felony and one year for the class A misdemeanor. The trial court ordered that the sentences be served concurrently and suspended one and a half years.

I.

The first issue is whether the investigative stop of Rodgers violated Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868 (1968).[4] The Fourth Amendment prohibits unreasonable

[4] We find it unclear exactly what Rodgers argues on appeal. Rodgers appears to argue that the stop by police violated Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868 (1968). Rodgers does not argue that the trial court abused its discretion by admitting any evidence.

Rodgers phrases the issue as whether "[t]he trial court abused its discretion when it admitted into evidence testimony that the defendant received a proper Terry Stop," and Rodgers argues that "[t]he trial court abused its discretion when it admitted testimony, from Officer Luster, that Officer Ristedt apprehended [Rodgers] and met the particularized standard for Terry v. Ohio." Appellant's Brief at 1, 4. We note that Rodgers did not object to the admission of Officer Luster's testimony. Rather, Rodgers's attorney moved to "exclude the arrest" of Rodgers. Transcript at 34. Thus, to the extent that Rodgers argues that the trial court abused its discretion when it admitted Officer Luster's testimony regarding the detention of Rodgers, we hold that Rodgers has waived this argument. See, e.g., Lashbrook v. State, 762 N.E.2d 756, 759 (Ind. 2002) (holding that the defendant waived his argument on appeal because he failed to object to certain testimony at trial).

searches and seizures by the government, and its safeguards extend to brief investigatory stops. Moultry v. State, 808 N.E.2d 168, 170 (Ind. Ct. App. 2004) (citing United States v. Arvizu, 534 U.S. 266, 273, 122 S. Ct. 744, 750 (2002)). Pursuant to the United States Supreme Court's decision in Terry v. Ohio, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968), a police officer may stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion, supported by articulable facts, that criminal activity "may be afoot," even if the officer lacks probable cause to make an arrest.

When determining whether the officer had reasonable suspicion, we examine the totality of the circumstances to conclude whether the officer had a "particularized and objective basis" for suspecting legal wrongdoing. Arvizu, 534 U.S. at 273, 122 S. Ct. at 750. "Reasonable suspicion exists if the facts known to the officer, together with the reasonable inferences arising therefrom, would cause an ordinarily prudent person to believe that criminal activity has or is about to occur." Mitchell v. State, 745 N.E.2d 775, 786-787 (Ind. 2001). We review the trial court's determination regarding reasonable suspicion de novo. Sellmer v. State, 842 N.E.2d 358, 361 (Ind. 2006).

Rodgers appears to argue there was not reasonable suspicion to support a Terry stop.[5] Specifically, Rodgers argues that the description provided did not provide height

[5] Rodgers argues that "[n]o evidence [was] presented to show how [Rodgers] was obtained or what caused the officer to approach [Rodgers] in particular." Appellant's Brief at 5. Officer Luster testified that "an officer that observed the suspect, matching the description" and that the "officer stopped the suspect." Transcript at 33. To the extent that Rodgers argues that the detaining officer did not have a particularized basis for suspecting legal wrongdoing, we note that "[a]n investigative stop may be based upon the collective information known to the law enforcement organization as a whole." Moultry v.

or other distinct characteristics and that "there are numerous people on any given evening that fit [the] description." Appellant's Brief at 5. Here, Davis described the man as "a white male wearing blue jeans, blue or green tee shirt" and brown "kind of straggly hair." Transcript at 32. Further, it was approximately two a.m., and Officer Luster described the foot traffic in the area as "pretty quiet." Id. at 46. Rodgers was stopped on the first street east of Somerset Street, where the theft occurred, and approximately two blocks south. Officer Luster testified that "[t]here was an officer that observed the suspect, matching the description." Id. at 33. We conclude that the officers had reasonable suspicion to stop Rodgers. See, e.g., Abel v. State, 773 N.E.2d 276, 279 (Ind. 2002) (addressing the defendant's concession that the stop was reasonable in that he "fit the general description of the sought-after person, was in the general area, and it was the early morning hours" by holding that the defendant was "correct"); Johnson v. State, 710 N.E.2d 925, 927-28 (Ind. Ct. App. 1999) (finding reasonable suspicion to support stop where the defendant fit the general description of the suspect who had fled from the police and was stopped within the perimeter set up by the police).

II.

The next issue is whether the evidence is sufficient to sustain Rodgers's convictions. When reviewing claims of insufficiency of the evidence, we do not reweigh

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State, 808 N.E.2d 168, 172 (Ind. Ct. App. 2004) (relying on Kindred v. State, 524 N.E.2d 279, 292 (Ind. 1988)).

the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id. Moreover, uncorroborated testimony of one witness, even if it is the victim, is sufficient to sustain a conviction. Ferrell v. State, 565 N.E.2d 1070, 1072-1073 (Ind. 1991). Rodgers argues that the evidence is insufficient to sustain his convictions for (A) theft as a class D felony; and (B) possession of paraphernalia as a class A misdemeanor. We will address each argument separately.

A. Theft

The offense of theft as a class D felony is governed by Ind. Code § 35-43-4-2, which provides that "[a] person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class D felony." The charging information alleges that Rodgers "did knowingly exert unauthorized control over the property, to wit: a brown compact retractable umbrella of another person, to wit: Terri Cassity, with the intent to deprive the person of any part of its value or use." Appellant's Appendix at 17. Thus, to convict Rodgers of theft as a class D felony, the State needed to prove beyond a reasonable doubt that Rodgers knowingly or intentionally exerted unauthorized control

over Cassity's brown umbrella with the intent to deprive Cassity of any part of its value or use.

Rodgers argues that the State did not prove that he knowingly exerted unauthorized control over the brown umbrella. Rodgers also argues that "no evidence links the umbrella in [Rodgers's] possession to the one that was misplaced from Ms. Cassity's car." Appellant's Brief at 7.

The record reveals that around two a.m. on August 1, 2005, Rodgers was rummaging through the contents of Cassity's vehicle. When Davis yelled at Rodgers, he exited the vehicle and entered a different vehicle. When Rodgers was stopped by the police, he had "a green, Thermos lunch bag, which was soft in nature," "a couple of screwdrivers," "a black CD visor holder with some CDs in it," "a keychain that had Northwest High School on it," and a brown umbrella. Transcript at 37. Officer Luster woke up Cassity and asked her to look around her vehicle for anything missing. Cassity discovered that the rear view mirror in her vehicle was "busted off" the windshield. Id. at 25. Cassity also identified the umbrella recovered from Rodgers as belonging to her. Specifically, the following exchange occurred between Officer Luster and the prosecutor:

Q: And so did [Cassity] positively identify the umbrella as hers?

A: Yes.

Transcript at 42-43. Cassity also testified that only she and her husband had permission to enter her vehicle.

This evidence is sufficient to demonstrate that Rodgers knowingly or intentionally exerted unauthorized control over Cassity's brown umbrella with the intent to deprive Cassity of any part of its value or use. Consequently, there is evidence of probative value from which a reasonable trier of fact could have found Rodgers guilty beyond a reasonable doubt of theft as a class D felony. See, e.g., Stinson v. State, 539 N.E.2d 33, 33-34 (Ind. Ct. App. 1989) (holding that the evidence was sufficient to sustain the defendant's conviction for theft).

B. Possession of Paraphernalia

The offense of possession of paraphernalia is governed by Ind. Code § 35-48-4-8.3(a), which provides that "[a] person who possesses a raw material, an instrument, a device, or other object that the person intends to use for . . . (1) introducing into the person's body a controlled substance; (2) testing the strength, effectiveness, or purity of a controlled substance; or (3) enhancing the effect of a controlled substance . . . commits a Class A infraction for possessing paraphernalia." Ind. Code § 35-48-4-8.3(b) provides that "[a] person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor."[6] The charging information alleges that Rodgers "did knowingly or intentionally possess a raw material, instrument, device, or other object, to wit: a small

[6] The charging information alleges that Rodgers "did knowingly or intentionally possess a raw material, instrument, device, or other object, to wit: a small metallic pipe with one end burnt that he/she intended to use for introducing into his/her body * * testing the strength, effectiveness of purity * * enhancing the effect of CRACK COCAINE which is a Controlled Substance listed on Schedule II of the Indiana Uniform Controlled Substances Act." Appellant's Appendix at 18.

metallic pipe with one end burnt that he/she intended to use for introducing into his/her body * * testing the strength, effectiveness of purity * * enhancing the effect of CRACK COCAINE which is a Controlled Substance listed on Schedule II of the Indiana Uniform Controlled Substances Act." Appellant's Appendix at 18. Thus, to convict Rodgers of possession of paraphernalia as a class A misdemeanor, the State needed to prove beyond a reasonable doubt that Rodgers knowingly or intentionally possessed the crack pipe and that Rodgers intended to use the crack pipe for introducing into his body a controlled substance or enhancing the effect of a controlled substance.

Rodgers argues that there was no evidence that the crack pipe was used to enhance any drug use or that the pipe was used for smoking drugs.[7] Officer Luster searched Rodgers and discovered a small silver pipe, which he referred to as a "crack pipe," in the back of Rodgers's pant pocket. Transcript at 38, 62. The laboratory exam report indicated that residue of cocaine was inside the pipe. The laboratory exam report was admitted by the trial court and stipulated to by Rodgers. Officer Luster testified that, based on his training and experience, the pipe was used to ingest crack cocaine.

This evidence is sufficient to demonstrate that Rodgers knowingly or intentionally possessed the crack pipe and that Rodgers intended to use for introducing into his body a

[7] Rodgers states that "[e]vidence seized illegally or obtained as a result of an illegal seizure by a government agent is not directly admissible in a criminal or quasi-criminal proceeding against a person whose expectation of privacy was violated by the illegal seizure." Appellant's Brief at 7. Rodgers does not argue that the seizure of the crack pipe was illegal and has waived this argument by failing to develop a cogent argument. See, e.g., Shane v. State, 716 N.E.2d 391, 398 n.3 (Ind. 1999) (holding that defendant waived argument on appeal by failing to develop a cogent argument).

controlled substance. Consequently, there is evidence of probative value from which a reasonable trier of fact could have found Rodgers guilty beyond a reasonable doubt of possession of paraphernalia as a class A misdemeanor. See, e.g., Trigg v. State, 725 N.E.2d 446, 449-450 (Ind. Ct. App. 2000) (holding that the evidence was sufficient to sustain the defendant's conviction for possession of paraphernalia where a residue encrusted crack pipe was lying on the seat where the defendant had been sitting).

For the foregoing reasons, we affirm Rodgers's convictions for theft as a class D felony and possession of paraphernalia as a class A misdemeanor.

Affirmed.

SULLIVAN, J. and CRONE, J. concur